3 judge appeal

April 26, 1967

Clerk, United States District Court
United States Court House
Constitution Avenue & John Marshall Place
Washington, D. C. 20001

ATTENTION: Mrs. Castagna, Room 1802

Re: Hobson v. Hansen
No. 82-66

Dear Sir:

Enclosed please find check for $1.25 to cover the cost of preparing the supplemental certified record in the above case. I understand that this supplemental record will be sent directly to the Clerk of the Supreme Court of the United States.

Very truly yours,

Jerry D. Anker

Enclosure

bc: William M. Kunstler, Esq.

Bill:
This supplemental record consists of the order granting your motion to extend time for filing the jurisdictional statement.

J.A.

April 25, 1997

Clerk, United States District Court
United States Court House
Constitution Avenue & John Marshall Place
Washington, D. C. 20001

ATTENTION: Mrs. Castagna, Room 1802

Re: Hobson v. Hansen
No. 69-56

Dear Sir:

Enclosed please find check for $1.25 to cover the cost of preparing the supplemental certified record in the above case. I understand that this supplemental record will be sent directly to the Clerk of the Supreme Court of the United States.

Very truly yours,

Jerry D. Anker

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This supplemental record consists of the order granting your motion to extend time for filing the jurisdictional statement.

J.A.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS W. HOBSON et al., Plaintiffs

v. Civil Action No. 82-66

CARL F. HANSEN et al., Defendants

ORDER

It appearing that by order of December 13, 1967, the United States Court of Appeals remanded the record in this case so that the District Court may supplement it by holding a further hearing on the motions to intervene filed by Carl F. Hansen, Reverend William D. Jackson, et al., and Lawrence A. Wilkinson; and

It further appearing that on January 2, 1968, counsel representing Defendant Carl C. Smuck and the proposed intervenors filed a motion to fix a date for the hearing on the motions to intervene and to stay other proceedings;

It is ORDERED that the hearing on the said motions be, and the same is hereby, set for 2:00 P.M. on Tuesday, January 23, 1968.

J. SKELLY WRIGHT
UNITED STATES CIRCUIT JUDGE*

January 4, 1968

*Sitting by designation pursuant to 28 U.S.C. § 291(c).

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JESSIE W. MOBLEY et al., Plaintiffs

v. Civil Action No. 82-66

CARL F. HANSEN et al., Defendants

ORDER

It appearing that by order of December 13, 1967, the United States Court of Appeals remanded the record in this case so that the District Court may supplement it by holding a further hearing on the motions to intervene filed by Carl F. Hansen, Reverend William D. Jackson, et al., and Lawrence A. Williamson; and

It further appearing that on January 2, 1968, counsel representing Defendant Carl G. Rauch and the proposed intervenors filed a motion to fix a date for the hearing on the motions to intervene and to stay other proceedings;

It is ORDERED that the hearing on the said motions be, and the same is hereby, set for 3:00 P.M. on Tuesday, January 23, 1968.

/s/

J. SKELLY WRIGHT
UNITED STATES CIRCUIT JUDGE*

January 4, 1968

*Sitting by designation pursuant to 28 U.S.C. § 291(b).

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS W. HOBSON, individually and on behalf of JEAN MARIE HOBSON and JULIUS W. HOBSON, JR., et al,	)	
Plaintiffs	)	
v.	)	Civil Action No. 82-66
CARL F. HANSEN, Superintendent of Schools of the District of Columbia, THE BOARD OF EDUCATION OF THE DISTRICT OF COLUMBIA, et al,	)	
Defendants	)	

MOTION OF DEFENDANT, CARL C. SMUCK,
AND OF PROPOSED INTERVENORS TO FIX DATE FOR
HEARING OF MOTIONS TO INTERVENE AND TO STAY OTHER PROCEEDINGS

Come now

(a) The defendant, Carl C. Smuck,

(b) The proposed intervenor, Carl F. Hansen,

(c) The proposed intervenor, Lawrence A. Wilkinson,

(d) The proposed intervenors, William D. Jackson, Margaret C. Carter, Katherine McK. Wilkinson, Charles Tait Trussell, Woodley G. Trussell, Dr. Michael Mann Duffy, Caroline C. Duffy, Reverend Ernest R. Stevenson, Robert E. Nelson, Barbara A. Nelson, Van H. Seagraves, Eleanor Seagraves, John R. Immer, Marjory J. Immer, Wm. E. Weld, Jr., Jane Weld, Richard A. Hendricks, Dawn C. Hendricks, and Reverend and Mrs. Cleveland B. Sparrow,

and move the Court as follows:

1. To fix an early date for hearing testimony on the movants motions to intervene in this action for the purposes of prosecuting an appeal from this Court's judgment of June 19, 1967.

2. To stay all other proceedings in this action until the United States Court of Appeals has relinquished jurisdiction

hereof.

F. Joseph Donohue
Thomas S. Jackson
Edmund D. Campbell
John L. Laskey

By Edmund D. Campbell

c/o Jackson, Gray & Laskey
1701 K Street, N.W.
Washington, D.C. 20006
628-0480
Attorneys for Movants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion, together with memorandum of points and authorities in support thereof, was mailed this 2nd day of January, 1968, to William M. Kunstler, Esquire, and Jerry D. Anker, Esquire, Attorneys for Plaintiffs, 1001 Connecticut Avenue, N.W., Washington, D.C. 20036; Honorable Charles T. Duncan, Corporation Counsel for the District of Columbia, District Building, Washington, D.C. 20004; to David G. Bress, Esquire, United States Attorney for the District of Columbia, United States Courthouse, Washington, D.C., 20001; and to William M. Kunstler, 511 Fifth Avenue, New York City, New York.

Edmund D. Campbell

Edmund D. Campbell

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. _____

JULIUS W. HOBSON, et al.,

Appellants,

v.

CARL F. HANSEN, et al.

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

Pursuant to Rule 53(1) of the Rules of this Court, appellants respectfully move for leave to proceed in forma pauperis. An affidavit in support of this motion is attached.

William M. Kunstler
511 Fifth Avenue
New York, New York 10017

Attorney for Appellants

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. _____

JULIUS W. HOBSON, et al.,

Appellants,

v.

CARL F. HANSEN, et al.

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William M. Kunstler
511 Fifth Avenue
New York, New York 10017

Attorney for Appellants

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. _____

JULIUS W. HOBSON, et al.,

Appellants,

v.

CARL F. HANSEN, et al.

AFFIDAVIT

I, Julius W. Hobson, being duly sworn, depose and say:

1. This is an affidavit in support of a motion for leave to proceed in forma pauperis in the Supreme Court of the United States in a proceeding in which I am one of the appellants. The proceeding is an appeal from a final judgment of a three-judge district court, convened pursuant to 28 U.S.C. §§ 2282, 2284, which refused to declare unconstitutional and enjoin the operation of District of Columbia Code § 31-101, which authorizes the District Judges of the United States District Court for the District of Columbia to appoint the members of the Board of Education of the District of Columbia.

2. A separate part of this same case is still pending before a single-judge district court. That part of the case involves a number of allegations of discrimination against Negro children and poor children by the Board of Education and the school administration of the District of Columbia. The trial of that part of the case took many weeks, and was very costly.

3. This entire litigation has been financed in part by contributions from those named plaintiffs who were financially

In the

United States District Court

District of Columbia

No. _____

JULIUS C. HANSEN, et al.,

Appellants,

v.

CARL F. HANSEN, et al.

AFFIDAVIT

I, Julius C. Hansen, being duly sworn, depose and say:

1. This is an affidavit in support of a motion for leave to proceed in forma pauperis in the Supreme Court of the United States in a proceeding in which I am one of the appellants. The proceeding is an appeal from a final judgment of a three-judge district court, convened pursuant to 28 U.S.C. §§ 2282, 2284, which refused to declare unconstitutional and enjoin the operation of District of Columbia Code § 31-203, which authorizes the District Judges of the United States District Court for the District of Columbia to appoint the members of the Board of Education of the District of Columbia.

2. A separate part of this case [illegible] raising a single-issue district court. That part of the case involves a number of allegations of discrimination against negro children and [illegible] by the Board of Education and the school administration of the District of Columbia. The trial of that part of the case took many weeks. The [illegible] many months.

3. This matter litigation has been pursued in part by contributions from [illegible] plaintiffs who were financially

able to make such contributions, in part from contributions from other members of the class on whose behalf this action was brought, and in part from other citizens and organizations who voluntarily supported this case. The funds from these various sources, however, have now been totally depleted.

4. All of the appellants in this case are citizens of the United States and desire to prosecute this appeal in the United States Supreme Court.

5. Because of my extremely limited financial means, I am unable to pay the fees and costs of this appeal, or to give security therefor, and still be able to provide myself and my dependents with the necessities of life.

6. I know as a matter of my own knowledge that the other named appellants in this case are also unable, because of their extremely limited financial means, to pay the fees and costs of this appeal, or to give security therefor, and still be able to provide themselves and their dependents with the necessities of life.

7. I believe I and the other appellants are entitled to the relief sought and I am submitting this affidavit in good faith. A more detailed statement as to the grounds on which I and the other appellants believe we are entitled to relief will be set forth in the jurisdictional statement to be filed on our behalf.

_____

Julius W. Hobson

Subscribed and sworn to before

me this _____day of _____, 1967.

_____

Notary Public

_____

Notary Public

My commission expires: _____

No. 171 Misc.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

JULIUS W. HOBSON, INDIVIDUALLY AND ON BEHALF OF JEAN MARIE HOBSON AND JULIUS W. HOBSON, JR., ET AL., APPELLANTS

v.

CARL F. HANSEN, SUPERINTENDENT OF SCHOOLS OF THE DISTRICT OF COLUMBIA, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

MEMORANDUM FOR APPELLEES

CHARLES T. DUNCAN,
Corporation Counsel for the
District of Columbia,
Washington, D.C., 20004.

THURGOOD MARSHALL,
Solicitor General,

CARL EARDLEY,
Acting Assistant Attorney General,

JOHN C. ELDRIDGE,
ROBERT V. ZENER,
Attorneys,
Department of Justice,
Washington, D.C., 20530.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 171 Misc.

JULIUS W. HOBSON, INDIVIDUALLY AND ON BEHALF OF JEAN MARIE HOBSON AND JULIUS W. HOBSON, JR., ET AL., APPELLANTS

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CARL F. HANSEN, SUPERINTENDENT OF SCHOOLS OF THE DISTRICT OF COLUMBIA, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

MEMORANDUM FOR APPELLEES

Section 31-101 of the District of Columbia Code provides that the members of the Board of Education of the District of Columbia "shall be appointed by the United States District Court judges of the District of Columbia." In this action before a three-judge court, appellants sought (1) a declaratory judgment that Section 31-101 is unconstitutional and (2) an order enjoining further appointments under that provision, declaring the offices of the Board of Education vacant, and directing election of a new Board.[1/] The court, in an opinion by Circuit Judge Fahy (265 F. Supp. 902), upheld Section 31-101 as authorized by both the District

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1/ Other counts of the complaint, alleging discriminatory and illegal action by the Board in violation of appellants' rights, were referred to a single district judge for trial. He recently entered a decree enjoining defendants from discriminating in the operation of the District of Columbia public school system, and requiring certain specific steps to implement this prohibition. Hobson et al. v. Hansen et al., D.D.C. Cir. No. 82-66, June 19, 1967 (Wright, Circuit Judge, sitting by designation).

Clause of Article I of the Constitution[2] and the appointments clause of Article II.[3] Circuit Judge Wright dissented.

Section 31-101 was adopted by Congress in 1906. 34 Stat. 316. Prior thereto the Board of Education had been appointed by the District Commissioners. The Board, however, was accused of "incompetency, of weakness, of incapacity, of indifference" (40 Cong. Rec. 5760); several examples of maladministration by the Board were cited; and it was argued that an amendment vesting the appointment authority in the judges of the Supreme Court of the District of Columbia (now the United States District Court) was necessary "so that the school system may be entirely divorced from the rest of the municipal government, just as the schools are divorced from the rest of the municipal government in almost every other community * * *" (40 Cong. Rec. 5756). The proponents stated their preference for having the Board of Education elected by the people of the District (40 Cong. Rec. 5758, 5761), but believed that this was not politically feasible. Ibid.[4] It was argued that the system of appointment by judges had worked successfully in Philadelphia (40 Cong. Rec. 5758, 5759) and that the judges would be free from municipal politics and yet familiar with the problems of the District (40 Cong. Rec. 5758, 5762). The amendment carried (40 Cong. Rec. 5763) despite opponents' arguments that the court should not be given "political power" (40 Cong. Rec. 5759) and that the Board of Education is "of the executive department of the

---

2/ Article I, Section 8, Clause 17, authorizes Congress to "exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States * * *."

3/ Article II, Section 2, Clause 2, provides that "the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law or in the Heads of Departments."

4/ "To have the judges of the supreme court of the District appoint the trustees is the proposition which strikes me most favorably * * *, for I can not get the trustees elected, as they ought to be." 40 Cong. Rec. 5762. Another alternative to appointment by the Commissioners suggested was appointment by the President, but it was felt that the President was not sufficiently familiar with the affairs of the District and should not be burdened with the appointment of local officials. 40 Cong. Rec. 5760, 5761-5762.

District and has no relation whatever to judicial functions." 40 Cong. Rec. 5763.

1. It has long been held that the courts established by Congress for the District of Columbia may be required to decide questions which are not within the "case or controversy" limitation of Article III. Keller v. Potomac Elec. Co., 261 U.S. 428; Postum Cereal Co. v. California Fig Nut Co., 272 U.S. 693; Federal Radio Comm'n v. General Electric Co., 281 U.S. 464. Until the decision in O'Donoghue v. United States, 289 U.S. 516, this holding was based on the view that the courts of the District had been established exclusively under Article I, Section 8, Clause 17 (the District clause), rather than under Article III. See Glidden Company v. Zdanok, 370 U.S. 530, 539. In the O'Donoghue decision, this Court held that the judges of the District of Columbia federal courts[5/] were entitled to the protection of the clause in Article III forbidding reduction in compensation. But no one suggested that all of the limitations of Article III were applicable to these courts. On the contrary, the Court indicated that the "case or controversy" limitation was not, for it reaffirmed the power of Congress to "clothe the courts of the District not only with the jurisdiction and powers of federal courts in the several States but with such authority as a State may confer on her courts." 289 U.S. at 545-546, quoting Keller v. Potomac Elec. Co., 261 U.S. 428, 442-444. Since States often delegate to their courts authority to appoint non-judicial officers, including members of school boards,[6/] it would seem to follow that Congress may vest the same authority in the federal courts of the District of Columbia.

To be sure, the plurality opinion in Glidden Company v. Zdanok, 370 U.S. 530, 580-582, suggests that at least one aspect of the "case or controversy" limitation of Article III--"to safeguard the independence of the judicial from the other branches by confining its activities to 'cases

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5/ O'Donoghue involved the Supreme Court of the District of Columbia, predecessor of the United States District Court, and the Court of Appeals for the District of Columbia, predecessor of the United States Court of Appeals for the District of Columbia Circuit.

6/ See cases collected in note 7 of the majority opinion below.

of a Judiciary nature'"--"remains fully applicable [in the District] at least to courts invested with jurisdiction solely over matters of national import." 370 U.S. at 582. However, Section 31-101 does not, in our view, infringe the independence of the federal judiciary in the District. This is not a case, like O'Donoghue, where the judges' independence is threatened by Congressional power over their salaries. And while there is a theoretical possibility that the District judges could be so burdened with administrative tasks as to impair their ability to decide cases, Congress can control the workload of federal judges by fixing the number of judges and determining the extent of federal court jurisdiction. Finally, we do not think it inevitable that the appointment of Board of Education members would compromise the ability of the court to decide cases questioning the official conduct of such members.

2. Section 31-101 is further supported by the appointments provision of Article II, which permits the Congress to "vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments." In Ex parte Siebold, 100 U.S. 371, this Court held that Congress could delegate to the United States Circuit Court authority to appoint supervisors of election, despite a contention that the duties of such supervisors were entirely executive in character:

> It is no doubt usual and proper to vest the appointment of inferior officers in that department of the government, executive or judicial, or in that particular executive department to which the duties of such officers appertain. But there is no absolute requirement to this effect in the Constitution; and, if there were, it would be difficult in many cases to determine to which department an office properly belonged * * *.

100 U.S. at 397.[7/] In Siebold, this Court further concluded that there

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7/ The primary duty of these supervisors was to observe elections and report to the House of Representatives, so that the House could exercise its constitutional function of judging the outcome of congressional elections. 16 Stat. 435-436. With respect to this duty, the supervisors could hardly have been characterized as court-related officers. The supervisors also had power to observe and report on State and municipal elections, and the federal courts had jurisdiction to count ballots and declare winners in such elections where there were alleged deprivations of the right to vote on account of race. 16 Stat. 146. As to such elections, supervisors could be characterized as court-related officers, roughly similar to special masters. However, the elections for which the supervisors in Siebold were appointed were elections to the House of Representatives. At no point in the Siebold opinion is there any intimation that the holding is based on any relationship between the supervisors and the judiciary.

was "no such incongruity in the duty required as to excuse the courts from its performance * * *." 100 U.S. at 398.

There is similarly no incongruity between the appointment authority conferred by Section 31-101 and the judicial duties of the District Court. In enacting Section 31-101 Congress was dealing with an unique situation. Not only was there no State judiciary in the District but the District had no elected legislature or executive; and the sponsors of the legislation, while believing that direct election of the Board of Education would be preferable, found that this was not politically obtainable.[8/] In this situation, a basic objection to involvement of the judiciary in the appointment of administrative officials--that the power to appoint should be exercised by individuals responsible to the electorate--was not pertinent. Congress could reasonably conclude that, as in Siebold, "it cannot be affirmed that the appointment of the officers in question could, with any greater propriety * * * have been assigned to any other depositary of official power capable of exercising it." Ex parte Siebold, 100 U.S. 371, 398.

8/ Election of the Board of Education is not obtainable as a matter of legal right. Although appellants' complaint asks for an order directing election of the Board members, they would not be entitled to it even if Section 31-101 were held invalid. Hobson v. Tobriner, 255 F. Supp. 295 (D.D.C.), petition for writ of mandamus denied sub nom. Hobson v. Gasch, C.A. D.C. No. 20,388, (September 26, 1966), certiorari denied, 386, U.S. 914. If Section 31-101 were invalidated appellants might be entitled to an order directing appointment of the Board members by the District Commissioners, since this was the system in effect prior to the enactment of Section 31-101 in 1906. 31 Stat. 564; H.R. Rep. No. 3395, 59th Cong. 1st Sess., p. 3. Appellants, however, have not asked for such relief, and have not joined the District Commissioners as parties to this action. Alternatively, if the old law were not viewed as coming back into force, the appointment of Board members might be governed by the first provision of the appointments clause of Article II which directs the President, acting with the advice and consent of the Senate, to appoint "all officers of the United States" whose appointment is not otherwise provided for by the Constitution or congressional legislation.

CONCLUSION

For the foregoing reasons, we believe the judgment of the district court is correct and should be affirmed. To be sure, appellants' challenge to the constitutionality of Section 30-101 raises questions relating to the powers of Congress and the proper functions of federal courts. As a practical matter, however, these issues concern only one agency of the District of Columbia, and, even there, legislative proposals for governmental reorganization may soon moot the constitutional debate. Accordingly, it would be appropriate, in our view, to enter a judgment of summary affirmance.

Respectfully submitted.

CHARLES T. DUNCAN,
Corporation Counsel for the
District of Columbia.

THURGOOD MARSHALL,
Solicitor General.

CARL EARDLEY,
Acting Assistant Attorney General.

JOHN C. ELDRIDGE,
ROBERT V. ZENER,
Attorneys.

JULY 1967.

No. 171 Misc.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

JULIUS W. HOBSON, INDIVIDUALLY AND ON BEHALF OF JEAN MARIE HOBSON AND JULIUS W. HOBSON, JR., ET AL., APPELLANTS

v.

CARL F. HANSEN, SUPERINTENDENT OF SCHOOLS OF THE DISTRICT OF COLUMBIA, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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District of Columbia,
Washington, D.C., 20004.

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100 U.S. at 397.[7/] In Siebold, this Court further concluded that there

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7/ The primary duty of these supervisors was to observe elections and report to the House of Representatives, so that the House could exercise its constitutional function of judging the outcome of congressional elections. 16 Stat. 435-436. With respect to this duty, the supervisors could hardly have been characterized as court-related officers. The supervisors also had power to observe and report on State and municipal elections, and the federal courts had jurisdiction to count ballots and declare winners in such elections where there were alleged deprivations of the right to vote on account of race. 16 Stat. 146. As to such elections, supervisors could be characterized as court-related officers, roughly similar to special masters. However, the elections for which the supervisors in Siebold were appointed were elections to the House of Representatives. At no point in the Siebold opinion is there any intimation that the holding is based on any relationship between the supervisors and the judiciary.

was "no such incongruity in the duty required as to excuse the courts from its performance * * *." 100 U.S. at 398.

There is similarly no incongruity between the appointment authority conferred by Section 31-101 and the judicial duties of the District Court. In enacting Section 31-101 Congress was dealing with an unique situation. Not only was there no State judiciary in the District but the District had no elected legislature or executive; and the sponsors of the legislation, while believing that direct election of the Board of Education would be preferable, found that this was not politically obtainable. 8/ In this situation, a basic objection to involvement of the judiciary in the appointment of administrative officials--that the power to appoint should be exercised by individuals responsible to the electorate--was not pertinent. Congress could reasonably conclude that, as in Siebold, "it cannot be affirmed that the appointment of the officers in question could, with any greater propriety * * * have been assigned to any other depositary of official power capable of exercising it." Ex parte Siebold, 100 U.S. 371, 398.

8/ Election of the Board of Education is not obtainable as a matter of legal right. Although appellants' complaint asks for an order directing election of the Board members, they would not be entitled to it even if Section 31-101 were held invalid. Hobson v. Tobriner, 255 F. Supp. 295 (D.D.C.), petition for writ of mandamus denied sub nom. Hobson v. Gasch, C.A. D.C. No. 20,388, (September 26, 1966), certiorari denied, 386 U.S. 914. If Section 31-101 were invalidated appellants might be entitled to an order directing appointment of the Board members by the District Commissioners, since this was the system in effect prior to the enactment of Section 31-101 in 1906. 31 Stat. 564; H.R. Rep. No. 3395, 59th Cong. 1st Sess., p. 3. Appellants, however, have not asked for such relief, and have not joined the District Commissioners as parties to this action. Alternatively, if the old law were not viewed as coming back into force, the appointment of Board members might be governed by the first provision of the appointments clause of Article II which directs the President, acting with the advice and consent of the Senate, to appoint "all officers of the United States" whose appointment is not otherwise provided for by the Constitution or congressional legislation.

CONCLUSION

For the foregoing reasons, we believe the judgment of the district court is correct and should be affirmed. To be sure, appellants' challenge to the constitutionality of Section 30-101 raises questions relating to the powers of Congress and the proper functions of federal courts. As a practical matter, however, these issues concern only one agency of the District of Columbia, and, even there, legislative proposals for governmental reorganization may soon moot the constitutional debate. Accordingly, it would be appropriate, in our view, to enter a judgment of summary affirmance.

Respectfully submitted.

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June 4, 1968

Ralph Temple, Esq.,
National Capital Area Civil Liberties Union,
1424 16th Street, N.W.
Washington, D.C.

Re: Hobson v. Hansen

Dear Ralph:

Pursuant to your request, this is to inform you that appellees hereby consent to your application to intervene amicus curiae in the above appeals which are presently pending in the United States Court of Appeals for the District of Columbia Circuit.

As I told you, appellees' brief is due on June 11 and argument is set for 9:30 a.m. on June 26th. I have moved for one hour argument instead of the usual thirty minutes. In their brief, appellants have raised the following points:

A. Preliminary issues

1. The parents and Hansen as an individual have standing to intervene.

2. Hansen and Smuck, in their official capacities, have standing to appeal.

3. The separation of the first cause of action was improper.

4. Judge Wright should have recused himself.

B. The Merits

1. The neighborhood school policy is constitutional.

2. The track system is constitutional.

3. The compulsory teacher reassignment is improper.

If I can help you in any way, please let me know.

As ever,

William M. Kunstler

wmk/st